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April 1, 2024

*Via ECF*

District Judge Hon. Denise L. Cote  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Courtroom 18B  
New York, New York 10007

**Re: *Albright v. Daily Harvest, Inc., et al.*** Civil Action No.: 22-cv-05987

Dear Judge Cote,

We represent Smirk's Ltd. (Smirk's) herein. We write to supplement our letter of earlier today.

At approximately 5:00 pm today, I received a telephone call from Nami Song, the Daily Harvest former employee that we have been attempting to serve with a deposition subpoena. She informed me that the subpoena was provided to her by Jennifer Piibe, an in-house lawyer at Daily Harvest. Ms. Song informed me that she can appear for deposition on the originally noticed date of April 4, 2024, which is no longer available for our office. When I asked for additional potential dates, Ms. Song provided additional dates and also stated, "Don't you have a deadline?" It is unclear how Ms. Song would know of this issue.

It appears odd that Ms. Song would suddenly surface, apparently via contact from Daily Harvest's in-house counsel after we had been told Daily Harvest's counsel was unable to produce Ms. Song for deposition or secure her cooperation. It is notable that this occurred following the meet and confer of earlier today and shortly after the filing of our letter application to your Honor.

Of the potential deposition dates provided by Ms. Song, the only date that we are available is April 17, 2024. Given Ms. Song's conduct, we have no way of knowing whether she will voluntarily appear. Further, it now appears that Daily Harvest may have control over this witness despite their prior representation that they do not. We respectfully ask that the Court grant our application filed earlier today in its entirety and grant leave to depose Ms. Song on April 17, 2024. Thus, if this Court agrees, we would depose Ms. Song on April 17, 2024 (assuming she appears),

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Stone Gate's witness on April 22, 2024, and Daily Harvest's 30(b)(6) witness on April 23. That would conclude all fact witness depositions.

Thank you very much for your Honor's time and consideration.

Respectfully submitted,

*Elizabeth Kimundi*

Elizabeth K. Kimundi

Haworth Barber & Gerstman, LLC

CC: All parties via ECF

*The deposition of Ms. Saeng  
may proceed on 4/17/24.  
The request for a 30(b)(6)  
deposition of Daily  
Harvest is denied.*

*James C. [unclear]  
4/2/24*